IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA BRUNSWICK DIVISION

ERICK ELLISON,

Petitioner,

VS.

CIVIL ACTION NO.: CV209-088

DEBORAH HICKEY, Warden,

Respondent.

ORDER

After an independent and *de novo* review of the record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Petitioner Erik Ellison (Petitioner) asserts that his claim is properly brought under 28 U.S.C. § 2241 and should not have been construed as a civil rights claim.

Plaintiff asserts that the Magistrate erroneously construed his petition as a civil rights claim. (Doc. No. 11, p. 1) ("[T]he Magistrate's 'R & R'[] relies on a 'Pre-Castro' case for its basis to 'construe[,]'[] to Petitioners <u>detriment</u>, Petitioner's pleadings from a simple 'run of the mill'[] 28 U.S.C. § 2241[] motion[] into a 'Civil Rights Claim'[] without any opportunity for Petitioner to consent or object to this construction.") It is unclear what Petitioner is attempting to allege with this objection. The case Petitioner cites, Castro v. United States, 540 U.S. 375 (2003), concerns successive 28 U.S.C. § 2255

motions and is not applicable to Petitioner. In his petition and objection Petitioner states that other prisoners who were similarly situated with worse criminal histories were transferred to Federal Prison Camps. Petitioner's civil rights claims were dismissed without prejudice; therefore, if petitioner wishes to pursue his equal protection claims, he may do so.

Petitioner also asserts that 28 U.S.C. § 2241 is the appropriate method for addressing the execution of his federal sentence, specifically, his custody classification and place of custody. These issues were appropriately addressed in the Magistrate Judge's Report, and as decisions regarding Petitioner's security classification are a discretionary function of the BOP, this portion of Petitioner's claim was properly denied. See Cohen v. United States, 151 F.3d 1338, 1343 (11th. Cir. 1998).

Petitioner's Objections are without merit. The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. Petitioner's petition for writ of habeas corpus, filed pursuant to 28 U.S.C. § 2241, is **DENIED** in part, and **DISMISSED** in part. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 14 day of

2009

HONORABLE LISA GODBEY WOOD UNITED STATES DISTRICT JUDGE